1879

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 187.

ABEL H. PIERCE AND JAMES D. REED, PARTNERS AS PIERCE & REED, PLAINTIFFS IN ERROR,

vs.

SPENCER P. WADE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED SEPTEMBER 26, 1877.

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1 UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

ABEL H. PIERCE AND JAMES D. REED, PARTNERS in business under the firm name of Pierce & Reed, plaintiffs,
vs.
SPENCER P. WADE, DEFENDANT. } 1311.

Be it remembered that on this day, to wit, the 7th day of June, 1875, the said defendant, by Peck & Ryan, his attorneys, filed in the clerk's office of the said court a transcript of the proceedings in the above-entitled action in Shawnee County district court; which said transcript, with the endorsements thereon, is in the words and figures following, to wit:

TRANSCRIPT.

Pleas in the district court in and for Shawnee County, Kansas.

ABEL H. PIERCE AND JAMES D. REED, PARTNERS in business under the firm name of Pierce & Reed, plaintiffs,
vs.
SPENCER P. WADE, DEFENDANT. } 2582.

Be it remembered that on the 9th day of October, A. D. 1874, said plaintiffs filed in the clerk's office of the district court within and for the county of Shawnee, in the third judicial district of the State of Kansas, their certain petition and precipe in the above-entitled cause in the words and figures following, to wit:

Petition.

STATE OF KANSAS,
County of Shawnee, ss:

2 In the district court for said county.

ABEL H. PIERCE AND JAMES D. REED, PARTNERS in business under the firm name of Pierce and Reed, plaintiffs,
vs.
SPENCER P. WADE, DEFENDANT. } Petition.

The plaintiffs say:

I. They are partners in business under the firm name of Pierce & Reed.

II. They are the legal owners and entitled to the immediate possession of the following-described personal property, namely: Two thousand four hundred and twenty-two (2,422) head of Texas steers, nearly all of them branded with a horse-shoe mark on the left hip, and some of them branded with a horse-shoe mark on the left side, and varying in

age from two to six years old; also four hundred and seventy-five (475) head of Texas cows, nearly all branded with a horse-shoe mark on the left hip, a few branded with the same mark on the left side, and varying in age from two to ten years old; all of said personal property being now in defendant's possession in Shawnee County, Kansas.

Said steers are worth $35.00 per head, and said cows are worth $20.00 per head; and of the aggregate value of ninety-four thousand two hundred and seventy dollars.

III. The defendant unlawfully and wrongfully detains the said personal property, goods, and chattels in his possession, and from the possession of the said plaintiffs, and has so detained the same as aforesaid for the space of three days, to the plaintiffs' damage one hundred thousand dollars.

Wherefore the plaintiffs pray for an order against the said defendant, that he may be ordered to deliver the said personal property to
3 the plaintiffs, and also a judgment against the defendant for the said sum of ninety-four thousand two hundred & seventy dollars, the value of said property, in case a return thereof cannot be had, and for one hundred thousand dollars, their damages sustained as aforesaid, for the unlawful and wrongful detention of said property, and costs of suit.

MARTIN & CASE,
Attorneys for Plaintiffs.

Precipe.

STATE OF KANSAS,
County of Shawnee, ss:

In the district court for said county.

ABEL H. PIERCE AND JAMES D. REED, PARTNERS in business under the firm name of Pierce & Reed, plaintiffs,
vs.
SPENCER P. WADE, DEFENDANT.
} Precipe.

The clerk of said court will issue a summons for the defendant, Spencer P. Wade, also an order of replevin as prayed for in the affidavit of the plaintiff, direct the summons and order to the coroner of the county of Shawnee, and returnable according to law.

If default is made the plaintiff will take judgment for the delivery of the personal property mentioned in the petition, or if a return of said property cannot be had, then a judgment for $94,270.00, the value thereof, and for $100,000.00 damages for the wrongful detention of the same, and costs of suit.

MARTIN & CASE,
Attorneys for Plaintiffs.

Upon which petition and precipe are the following endorsements, to wit:

I hereby agree to become security for costs in the above-entitled action. Dated this day of October, A. D. 1874.

JACOB SMITH.

Approved:

HIRAM McARTHUR, *Clerk.*

2582. Pierce & Reed vs. S. P. Wade. Petition & precipe.
4 Filed Oct. 9th, 1874. Hiram McArthur, clerk.

And that afterwards, to wit, on the 9th day of October, A. D. 1874, said plaintiffs filed in the clerk's office of said court a certain affidavit for replevin in the above-entitled cause; which affidavit is in the words and figures following, to wit:

Affidavit for replevin.

STATE OF KANSAS,
Shawnee County, ss:
In the district court in and for the said county.

ABEL H. PIERCE AND JAMES D. REED, PARTNERS in business under the firm name of Pierce & Reed, plaintiffs,
vs.
SPENCER P. WADE, DEFENDANT.
} Affidavit for replevin.

THE STATE OF KANSAS,
County of Shawnee, ss:

Abel H. Pierce, of lawful age, being by me first duly sworn, *to* upon oath states that he is one of the plaintiffs in the above-entitled action, and that the plaintiffs are the legal owners of the following-described personal property, viz: Two thousand four hundred and twenty-two (2,422) head of Texas steers, nearly all of them branded with a horse-shoe mark on the left hip, and some of them branded with a horse-shoe mark on the left side, and varying in age from two to six years old; also four hundred and seventy-five (475) head of Texas cows, nearly all branded with a horse-shoe mark on the left hip, a few branded with the same mark on the left side, and varying in age from two to ten years old; all of said personal property being now in defendant's possession in Shawnee County, Kansas, and that the said plaintiffs are entitled to the immediate possession of the said described property; that the said property is wrongfully detained by the said defendant; that the
5 said property was not taken in execution on any order or judgment against the said plaintiffs, or either of them, or for the payment of any tax, fine, or amercement assessed against the said plaintiffs or either of them, or by virtue of an order of delivery issued under article 10 of the code of civil procedure of the State of Kansas in replevin, or any other mesne or final process issued against the said plaintiffs, or either of them, and that the actual value of said property is as follows, viz: Two thousand four hundred and twenty-two (2,422) head of Texas steers as hereinbefore described, thirty-five dollars ($35.00) per head; total value eighty-four thousand seven hundred and seventy dollars ($84,770.00); four hundred and seventy-five (475) head of Texas cows as hereinbefore described, twenty dollars ($20.00) per head; total value nine thousand five hundred dollars ($9,500.00); said property being now in the possession of said defendant in Shawnee County, Kansas.

ABEL H. PIERCE.

Subscribed in my presence and sworn to before me this 3rd day of October, A. D. 1874.

[SEAL.] HIRAM McARTHUR,
Clerk of the District Court for Shawnee Co., Kansas.

Upon which are the endorsements following, to wit: 2582. Pierce & Reed vs. S. P. Wade. Affidavit for replevin. Filed Oct. 9, 1874. Hiram McArthur, clerk.

age from two to six years old; also four hundred and seventy-five (475) head of Texas cows, nearly all branded with a horse-shoe mark on the left hip, a few branded with the same mark on the left side, and varying in age from two to ten years old; all of said personal property being now in defendant's possession in Shawnee County, Kansas.

Said steers are worth $35.00 per head, and said cows are worth $20.00 per head; and of the aggregate value of ninety-four thousand two hundred and seventy dollars.

III. The defendant unlawfully and wrongfully detains the said personal property, goods, and chattels in his possession, and from the possession of the said plaintiffs, and has so detained the same as aforesaid for the space of three days, to the plaintiffs' damage one hundred thousand dollars.

Wherefore the plaintiffs pray for an order against the said defendant, that he may be ordered to deliver the said personal property to
3 the plaintiffs, and also a judgment against the defendant for the said sum of ninety-four thousand two hundred & seventy dollars, the value of said property, in case a return thereof cannot be had, and for one hundred thousand dollars, their damages sustained as aforesaid, for the unlawful and wrongful detention of said property, and costs of suit.

MARTIN & CASE,
Attorneys for Plaintiffs.

Precipe.

STATE OF KANSAS,
County of Shawnee, ss:

In the district court for said county.

ABEL H. PIERCE AND JAMES D. REED, PARTNERS in business under the firm name of Pierce & Reed, plaintiffs,
vs.
SPENCER P. WADE, DEFENDANT.
} Precipe.

The clerk of said court will issue a summons for the defendant, Spencer P. Wade, also an order of replevin as prayed for in the affidavit of the plaintiff, direct the summons and order to the coroner of the county of Shawnee, and returnable according to law.

If default is made the plaintiff will take judgment for the delivery of the personal property mentioned in the petition, or if a return of said property cannot be had, then a judgment for $94,270.00, the value thereof, and for $100,000.00 damages for the wrongful detention of the same, and costs of suit.

MARTIN & CASE,
Attorneys for Plaintiffs.

Upon which petition and precipe are the following endorsements, to wit:

I hereby agree to become security for costs in the above-entitled action. Dated this day of October, A. D. 1874.

JACOB SMITH.

Approved:

HIRAM McARTHUR, *Clerk.*

2582. Pierce & Reed vs. S. P. Wade. Petition & precipe.
4 Filed Oct. 9th, 1874. Hiram McArthur, clerk.

And that afterwards, to wit, on the 9th day of October, A. D. 1874, said plaintiffs filed in the clerk's office of said court a certain affidavit for replevin in the above-entitled cause; which affidavit is in the words and figures following, to wit:

Affidavit for replevin.

STATE OF KANSAS,
Shawnee County, ss:
In the district court in and for the said county.

ABEL H. PIERCE AND JAMES D. REED, PARTNERS in business under the firm name of Pierce & Reed, plaintiffs,
vs.
SPENCER P. WADE, DEFENDANT.
} Affidavit for replevin.

THE STATE OF KANSAS,
County of Shawnee, ss:

Abel H. Pierce, of lawful age, being by me first duly sworn, *to* upon oath states that he is one of the plaintiffs in the above-entitled action, and that the plaintiffs are the legal owners of the following described personal property, viz: Two thousand four hundred and twenty-two (2,422) head of Texas steers, nearly all of them branded with a horse-shoe mark on the left hip, and some of them branded with a horse-shoe mark on the left side, and varying in age from two to six years old; also four hundred and seventy-five (475) head of Texas cows, nearly all branded with a horse-shoe mark on the left hip, a few branded with the same mark on the left side, and varying in age from two to ten years old; all of said personal property being now in defendant's possession in Shawnee County, Kansas, and that the said plaintiffs are entitled to the immediate possession of the said described property; that the said property is wrongfully detained by the said defendant; that the said property was not taken in execution on any order or judgment against the said plaintiffs, or either of them, or for the payment of any tax, fine, or amercement assessed against the said plaintiffs or either of them, or by virtue of an order of delivery issued under article 10 of the code of civil procedure of the State of Kansas in replevin, or any other mesne or final process issued against the said plaintiffs, or either of them, and that the actual value of said property is as follows, viz: Two thousand four hundred and twenty-two (2,422) head of Texas steers as hereinbefore described, thirty-five dollars ($35.00) per head; total value eighty-four thousand seven hundred and seventy dollars ($84,770.00); four hundred and seventy-five (475) head of Texas cows as hereinbefore described, twenty dollars ($20.00) per head; total value nine thousand five hundred dollars ($9,500.00); said property being now in the possession of said defendant in Shawnee County, Kansas.

ABEL H. PIERCE.

Subscribed in my presence and sworn to before me this 3rd day of October, A. D. 1874.

[SEAL.] HIRAM McARTHUR,
Clerk of the District Court for Shawnee Co., Kansas.

Upon which are the endorsements following, to wit: 2582. Pierce & Reed vs. S. P. Wade. Affidavit for replevin. Filed Oct. 9, 1874. Hiram McArthur, clerk.

And that afterwards, to wit, on the 9th day of October, A. D. 1874, said plaintiffs filed in the clerk's office of said court in said cause a certain bond in replevin which bond is in the words and figures following, to wit:

Bond in replevin.

STATE OF KANSAS,
Shawnee County, ss:

In the district court for the said county.

ABEL H. PIERCE AND JAMES D. REED, PARTNERS in business under the firm name of Pierce & Reed, plaintiffs,
vs.
6 SPENCER P. WADE, DEFENDANT.
} Bond for replevin.

Whereas the plaintiffs above named have commenced an action in replevin in the court above entitled against the above-named defendant, and have filed the affidavit required by law for an order of replevin to be issued by the clerk of said court for the delivery of certain property described therein, and the value of which said property, as therein stated, is the sum of $94,270.00:

Now, therefore, we, Abel H. Pierce and Pierce & Reed, as principals, and Howard M. Holden, Wm. K. Shaffer, J. D. Reed, O. W. Wheeler, Edward H. Allen, J. W. L. Slavins, J. H. Mansur, W. C. Oburn, and Jacob Smith, as sureties, do hereby undertake to and with the said defendant, Spencer P. Wade, in the penal sum of thirty thousand ($30,000.00) dollars, to the effect that the said plaintiff shall duly prosecute the said action and pay all costs and damages which may be awarded against them, and if the said property be delivered to them that they will return the same to the said defendant if a return thereof be adjudged.

Witness our hands and seals this 8th day of October, A. D. 1874.

PIERCE & REED.	[SEAL.]
A. H. PIERCE.	[SEAL.]
HOWARD M. HOLDEN.	[SEAL.]
WM. K. SHAEFFER.	[SEAL.]
J. D. REED.	[SEAL.]
O. W. WHEELER.	[SEAL.]
JACOB SMITH.	[SEAL.]
EDWARD H. ALLEN.	[SEAL.]
J. W. L. SLAVENS.	[SEAL.]
W. C. OBURN.	[SEAL.]
J. H. MANSUR.	[SEAL.]

The above undertaking and the sureties thereto approved by me this 9 day of October, A. D. 1874.

HIRAM McARTHUR,
Clerk of the District Court for Shawnee Co., Kansas.

STATE OF KANSAS,
County of Shawnee, ss:

of lawful age, being first duly sworn, says
7–8 that he is worth the sum of thousand dollars over and above all exemptions allowed by law, and over and above all his debts and liabilities of every kind.

Subscribed in my presence and sworn to before me this day of October, A. D. 1874.

Clerk of the District Court, Shawnee County, Kansas.

STATE OF KANSAS,
County of Shawnee, ss:

of lawful age, being first duly sworn, says that he is worth the sum of thousand dollars over and above all exemptions allowed by law, and over and above all his debts and liabilities of every kind.

Subscribed in my presence and sworn to before me this day of October, A. D. 1874.

Clerk of the District Court, Shawnee Co., Kansas.

STATE OF KANSAS,
County of Shawnee, ss:

of lawful age, being first duly sworn, says that he is worth the sum of thousand dollars over and above all exemptions allowed by law, and over and above all his debts and liabilities of every kind.

Subscribed in my presence and sworn to before me this day of October, A. D. 1874.

Clerk of the District Court, Shawnee County, Kansas.

STATE OF KANSAS,
County of Shawnee, ss:

of lawful age, being first duly sworn, says that
9 he is worth the sum of thousand dollars over and above all exemptions allowed by law, and over and above all his debts and liabilities of every kind.

Subscribed in my presence and sworn to before me this day of October, A. D. 1874.

Clerk of the District Court, Shawnee Co., Kansas.

STATE OF KANSAS,
County of Shawnee, ss:

of lawful age, being first duly sworn, says that he is worth the sum of thousand dollars over and above all exemptions allowed by law, and over and above all his debts and liabilities of every kind.

Subscribed in my presence and sworn to before me this day of October, A. D. 1874.

Clerk of the District Court, Shawnee Co., Kansas.

STATE OF KANSAS,
County of Shawnee, ss:

of lawful age, being first duly sworn, says that he is

And that afterwards, to wit, on the 9th day of October, A. D. 1874, said plaintiffs filed in the clerk's office of said court in said cause a certain bond in replevin which bond is in the words and figures following, to wit:

Bond in replevin.

STATE OF KANSAS,
Shawnee County, ss:

In the district court for the said county.

ABEL H. PIERCE AND JAMES D. REED, PARTNERS in business under the firm name of Pierce & Reed, plaintiffs,
vs.
6 SPENCER P. WADE, DEFENDANT.
} Bond for replevin.

Whereas the plaintiffs above named have commenced an action in replevin in the court above entitled against the above-named defendant, and have filed the affidavit required by law for an order of replevin to be issued by the clerk of said court for the delivery of certain property described therein, and the value of which said property, as therein stated, is the sum of $94,270.00:

Now, therefore, we, Abel H. Pierce and Pierce & Reed, as principals, and Howard M. Holden, Wm. K. Shaffer, J. D. Reed, O. W. Wheeler, Edward H. Allen, J. W. L. Slavins, J. H. Mansur, W. C. Oburn, and Jacob Smith, as sureties, do hereby undertake to and with the said defendant, Spencer P. Wade, in the penal sum of thirty thousand ($30,000.00) dollars, to the effect that the said plaintiff shall duly prosecute the said action and pay all costs and damages which may be awarded against them, and if the said property be delivered to them that they will return the same to the said defendant if a return thereof be adjudged.

Witness our hands and seals this 8th day of October, A. D. 1874.

PIERCE & REED.	[SEAL.]
A. H. PIERCE.	[SEAL.]
HOWARD M. HOLDEN.	[SEAL.]
WM. K. SHAEFFER.	[SEAL.]
J. D. REED.	[SEAL.]
O. W. WHEELER.	[SEAL.]
JACOB SMITH.	[SEAL.]
EDWARD H. ALLEN.	[SEAL.]
J. W. L. SLAVENS.	[SEAL.]
W. C. OBURN.	[SEAL.]
J. H. MANSUR.	[SEAL.]

The above undertaking and the sureties thereto approved by me this 9 day of October, A. D. 1874.

HIRAM McARTHUR,
Clerk of the District Court for Shawnee Co., Kansas.

STATE OF KANSAS,
County of Shawnee, ss:

of lawful age, being first duly sworn, says
7–8 that he is worth the sum of thousand dollars over and above all exemptions allowed by law, and over and above all his debts and liabilities of every kind.

Subscribed in my presence and sworn to before me this day of October, A. D. 1874.

Clerk of the District Court, Shawnee County, Kansas.

STATE OF KANSAS,
County of Shawnee, ss:

of lawful age, being first duly sworn, says that he is worth the sum of thousand dollars over and above all exemptions allowed by law, and over and above all his debts and liabilities of every kind.

Subscribed in my presence and sworn to before me this day of October, A. D. 1874.

Clerk of the District Court, Shawnee Co., Kansas.

STATE OF KANSAS,
County of Shawnee, ss:

of lawful age, being first duly sworn, says that he is worth the sum of thousand dollars over and above all exemptions allowed by law, and over and above all his debts and liabilities of every kind.

Subscribed in my presence and sworn to before me this day of October, A. D. 1874.

Clerk of the District Court, Shawnee County, Kansas.

STATE OF KANSAS,
County of Shawnee, ss:

of lawful age, being first duly sworn, says that he is worth the sum of thousand dollars over and above all exemptions allowed by law, and over and above all his debts and liabilities of every kind.

Subscribed in my presence and sworn to before me this day of October, A. D. 1874.

Clerk of the District Court, Shawnee Co., Kansas.

STATE OF KANSAS,
County of Shawnee, ss:

of lawful age, being first duly sworn, says that he is worth the sum of thousand dollars over and above all exemptions allowed by law, and over and above all his debts and liabilities of every kind.

Subscribed in my presence and sworn to before me this day of October, A. D. 1874.

Clerk of the District Court, Shawnee Co., Kansas.

STATE OF KANSAS,
County of Shawnee, ss:

of lawful age, being first duly sworn, says that he is

worth the sum of thousand dollars over and above all exemptions allowed by law, and over and above all his debts and liabilities of every kind.

Subscribed in my presence and sworn to before me this day of October, A. D. 1874.

Clerk of the District Court, Shawnee County, Kansas.

STATE OF KANSAS,
County of Shawnee, ss:

of lawful age, being first duly sworn, says that he is worth the sum of thousand dollars over and above all ex-
10 emptions allowed by law, and over and above all his debts and liabilities of every kind.

Subscribed in my presence and sworn to before me this day of October, A. D. 1874.

Clerk of the District Court.

STATE OF KANSAS,
County of Shawnee, ss:

of lawful age, being first duly sworn, says that he is worth the sum of thousand dollars over and above all exemptions allowed by law, and over and above all his debts and liabilities of every kind.

Subscribed in my presence and sworn to before me this day of October, A. D. 1874.

Clerk of the District Court, Shawnee Co., Kansas.

STATE OF KANSAS,
County of Shawnee, ss:

of lawful age being first duly sworn, says that he is worth the sum of thousand dollars over and above all exemptions allowed by law, and over and above all his debts and liabilities of every kind.

Subscribed in my presence and sworn to before me this day of October, A. D. 1874.

Clerk of the District Court, Shawnee Co., Kansas.

Upon which bond are the endorsements following, to wit: 2582. Pierce & Reed vs. Spencer P. Wade. Replevin bond. Filed Oct. 9, 1874. Hiram McArthur, clerk.

And that afterwards, to wit, on the 9th day of October, A. D
11 1874, said plaintiffs filed in the clerk's office of said court in said cause a certain consent in writing for the issuance of an order of replevin; which consent in writing is in the words and figures following, to wit:

Consent in writing to filing of bond.

STATE OF KANSAS,
County of Shawnee, ss:

In the district court for said county.

PIERCE & REED, PLAINTIFFS,
vs.
SPENCER P. WADE, DEFENDANTS. } Consent to filing of bond.

We consent to, that the clerk of said court may issue an order of replevin in the above-entitled action upon the bond of Jacob Smith and others for thirty thousand dollars, as now filed in the above-entitled action.

Dated this 9th day of October, A. D. 1874.

PECK & RYAN,
Attorneys for H. B Cullum, Receiver 1st Nat. Bank of Topeka, Kansas.
JOHN A. GRAY,
Attorney for Valley Nat. Bank of St. Louis, Mo.
PECK & RYAN,
Att'ys for Defendant in the above action.

Upon which are the endorsements following, to wit: Pierce & Reed vs. Spencer P. Wade. Consent to filing bond. Filed Oct. 9, 1874. Hiram McArthur, clerk.

And that afterwards, to wit, on the 9th day of October, A. D. 1874, there was issued out of the clerk's office of said court in said cause a certain summons in the words and figures following, to wit:

Summons.

UNITED STATES OF AMERICA,
State of Kansas, County of Shawnee:

The State of Kansas to the coroner of Shawnee County, greeting:

You are hereby commanded to notify Spencer P. Wade that he has been sued by Abel H. Pierce and James D. Reed, partners in business under the firm name of Pierce & Reed, in the district court
12 within and for the county of Shawnee, in the third judicial district of the State of Kansas, and that unless he answers by the 8th day of November, A. D. 1874, the petition of the said Pierce & Reed against him filed in the clerk's office of the court aforesaid, such petition will be taken as true, and judgment rendered accordingly. You will make due return of this summons on or before the 19th day of October, 1874.

Witness my hand and the seal of said court affixed at my office in the city of Topeka this 9th day of October, A. D. 1874.

[SEAL.] HIRAM McARTHUR, *Clerk.*

Upon which are the endorsements following, to wit:

If default is made the plaintiff will take judgment for the delivery of the personal property mentioned in the petition, or if a return of said property cannot be had, then a judgment for $94,270.00, the value thereof, and for $100,000.00 damages for the wrongful detention of the same, and costs of suit.

MARTIN & CASE,
Attorneys for Plaintiffs.

I received this writ this 9th day of October, A. D. 1874, at 5 of the clock, p. m., and executed the same October 9th, A. D. 1874, at 7 o'clock p. m., by delivering to the within named defendant, Spencer P. Wade, a true and certified copy of the original summons with all the endorsements thereon.

S. E. SHELDON,
Coroner.

Coroner's fees: Service, 50c.; copy, 25c.; mileage, 20c.; total, 95c.

D. C. S. C. No. 2582. Summons. Pierce & Reed vs. Spencer P. Wade. Issued Oct. 9th, 1874. Returnable Oct. 19th, 1874. Martin & Case, attorneys for plaintiffs. Filed 187 . , clerk. Leave granted to file this as of the return day. May 28, '75. I. 1 M.

And that afterwards, to wit, on the 9th day of October, A. D. 1874 there was issued out of the clerk's office of said court in said cause
13 a certain order of replevin in the words and figures following, to wit:

Order of replevin.

STATE OF KANSAS,
County of Shawnee, ss:

The State of Kansas to the coroner of Shawnee County, greeting:

Whereas Abel H. Pierce and James D. Reed, partners in business under the firm name of Pierce & Reed, has commenced in the district court of the State of Kansas within and for the county of Shawnee, in the third judicial district of said State, against Spencer P. Wade, a civil action for the recovery of the following specific personal property, to wit: 2,422 head of Texas steers, nearly all of them branded with a horseshoe mark on the left hip, and some of them branded with a horseshoe mark on the left side, and varying in age from two to 6 years old; also 475 head of Texas cows, nearly all branded with a horse-shoe mark on the left hip, a few branded with the same mark on the left side, and varying in age from 2 to 10 years old, all of said personal property being now in defendant's possession in Shawnee County, Kansas, and has filed his affidavit and undertaking, as required by law, in the clerk's office of said court, in order to obtain an order for the immediate delivery of the said goods and chattels. This, therefore, is to command you as such sheriff to take the said goods and chattels above described and deliver the same to the said Pierce and Reed, plaintiffs in said action, and of this order and your proceeding hereon make due return on or before the 19th day of October, 1874.

Witness my hand with the seal of said court affixed, at my office in the city of Topeka, this 9th day of October, A. D. 1874.

[SEAL.] HIRAM MCARTHUR, *Clerk.*

Upon which are the endorsements following, to wit:

I received this writ of replevin this 9th day of October, A. D. 1874, at 5 o'clock p. m., and executed the same at 7 o'clock p. m., October 9th, A. D. 1874, by delivering to the within named defendant, Spencer P.
14 Wade, a true and certified copy of the original writ of replevin with all the endorsements thereon, and at the same time, by agreement of all parties concerned and their attorneys, taking into my possession the following described personal property:

Four hundred and thirty-three (433) head of Texas steers branded with horse-shoe brand on left side, known as the Murphy herd.

Four hundred (400) head of Texas steers, branded with horse-shoe brand on left hip, known as the Abe Wood herd.

Four hundred head (400) of Texas steers, branded with horse-shoe brand on left hip, known as the Clark Wirt herd.

Four hundred and forty-two (442) head of Texas steers, branded with horse-shoe brand on left hip, known as the Alex. McDonald (Cal.) herd.

Four hundred head (400) of Texas steers, branded with horse-shoe brand on left hip, known as the Feller herd.

Four hundred and twenty-seven (427) head of Texas steers, known as the Warren Fenton herd, branded with a horse-shoe brand.

Three hundred and thirty-three (333) head of Texas steers, branded with a horse-shoe brand on the left hip, known as the Wm. Seltzer herd.

Three hundred and thirty-two head (332) of Texas steers, branded with a horse-shoe brand on the left hip, known as the Clark E. Shipman herd.

Lot 1. Four hundred and twenty-four head (424) Texas cattle, branded with horse-shoe brand behind left shoulder, open side up, Thomas Griffen herd.

Lot 2. Adam Dupee herd, four hundred and twenty-four (424) head, branded with a horse-shoe behind left shoulder, open side down.

Lot 3. S. S. Blayton, four hundred and twenty-eight (428) head, branded on left hip, horse-shoe, open side down.

Lot 4. John A. Taylor herd, two hundred and eight head, branded with horse-shoe on left hip, open side down.

Lot 5. Henry Ottenger, one hundred and eighty-three (183) head and sixty-five head, branded one left hip, horse-shoe, open side down.

Lot 6. Levi M. Philips herd, four hundred and twenty-three
15 herd (423), branded on the left hip, horse-shoe, open side up.

Eight hundred and fifty-seven (857) head of Texas steers, branded with a horse-shoe, and four hundred and seventy-five (475) head of Texas cows, branded with a horse-shoe, herded near Kingsville, Shawnee County, Kansas.

Total number of cattle, six thousand six hundred and sixty-four (6,664), and after holding the same twenty-four (24) hours, I did on the 10th day of October, A. D. 1874, at 9 o'clock p. m., deliver to the within named plaintiffs, Pierce & Reed, the above described personal property, taking their receipt therefor.

S. E. SHELDON, *Coroner.*

Coroner's fees: Service, $1.00; copy, 25c.; 30 miles, $3.00; holding and turning over stock, &c., $5.00—total, $9.25.

D. C. S. C. No. 2582. Replevin. term, 187 . Pierce & Reed, plaintiff, vs. Spencer P. Wade, def't. Issued Oct. 9, 1874. Returnable Oct. 19, 1874. Filed , 187 . , clerk. Leave granted to file this as of the return day, May 28, '75. I. T. M.

And that afterwards, to wit, on the day of October, A. D. 1874, there was filed in the clerk's office of said court in said cause a certain receipt, in the words and figures following, to wit:

TOPEKA, KANSAS, *Oct.* 10, 1874.

Received of S. P. Wade, sheriff of Shawnee County, State of Kansas, the following described personal property, taken and held by the said S. P. Wade, sheriff of said county, by virtue of two orders of attach-

ment, issued out of the district court of the third judicial district, held in and for Shawnee County, State of Kansas, in the case wherein the Valley National Bank of St. Louis, Mo., is plaintiff, and Andrew Wilson is defendant, and in the case wherein Henry B. Cullum, as receiver of the First National Bank of Topeka, Kansas, is plaintiff, and
16 Andrew Wilson is defendant, to wit:

Four hundred and thirty-three (433) head of Texas steers, branded with horse-shoe brand on left side, known as the Murphy herd.

Four hundred (400) head of Texas steers, branded with horse-shoe brand on left hip, known as the Abe Wood herd.

Four hundred (400) head of Texas steers, branded with horse-shoe brand on left hip, known as the Clark Wirt herd.

Four hundred and forty-two (442) head of Texas steers, branded with horse shoe brand on left hip, known as the Alex. McDonald (Cal.) herd.

Four hundred (400) head of Texas steers, branded with horse-shoe brand on left hip, known as the Feller herd.

Four hundred and twenty-seven (427) head of Texas steers, known as the Warren Fenton herd, branded with a horse-shoe brand.

Three hundred and thirty-three (333) head of Texas steers, branded with a horse-shoe brand on the left hip, known as the Wm. Seltzer herd.

Three hundred and thirty-two (332) head of Texas steers, branded with a horse-shoe on the left hip, known as Clark E. Shipman herd.

Lot 1. Four hundred and twenty-four (424) head Texas cattle, branded with horse-shoe behind left shoulder, open side up, Thomas Griffin herd.

Lot 2. Adam Dupee herd, four hundred and twenty (420) head, branded horse-shoe behind left shoulder, open side down.

Lot 3. S. S. Blayton, four hundred and twenty-eight head (428), branded on the left hip, horse-shoe, open side down.

Lot 4. John A. Taylor herd, two hundred and eight head (208), branded with horse-shoe on left hip, open side down.

Lot 5. Henry Ottenger, one hundred and eighty-three (183) head and sixty-five head, branded on left hip, horse-shoe, open side down.

17 Lot 6. Levi M. Philips herd, four hundred and twenty-three head (423), branded on the left hip with a horse-shoe, open side up.

Eight hundred and fifty-seven (857) head Texas steers, branded with *with* a horse-shoe, and four hundred and seventy-five (475) head of Texas cows, branded with a horse-shoe, herded near Kingsville, Shawnee County, Kansas.

Total number of cattle, six thousand six hundred and sixty-four (6,664) head.

S. E. SHELDON,
Coroner of Shawnee Co., Kan.

Upon which are the endorsements following, to wit: Receipt of S. E. Sheldon, coroner, to S. P. Wade, sheriff.

And that afterwards, to wit, on the 17th day of March, A. D. 1875, said plaintiffs filed in the clerk's office of said court, in said cause, their certain amended petition, in the words and figures following, to wit:

Amended petition.

STATE OF KANSAS,
County of Shawnee, ss:

In the district court for said county.

ABEL H. PIERCE AND JAMES D. REED, PARTNERS in business under the firm name of Pierce & Reed, plaintiffs,
vs.
SPENCER P. WADE, DEFENDANT.
} Amended petition.

The plaintiffs say:

I. They are partners in business under the firm name of Pierce & Reed.

II. They are the legal owners and entitled to the immediate possession of the following described personal property, namely:

Four hundred and thirty-three (433) head of Texas steers, branded with horse-shoe brand on left side, known as the Murphy herd.

Four hundred (400) head of Texas steers, branded with horse-shoe brand on left hip, known as the Abe Wood herd.

18 Four hundred (400) head of Texas steers, branded with horse-shoe brand on left hip, known as the Clark West herd.

Four hundred and forty-two (442) head of Texas steers, branded with horse-shoe brand on left hip, known as the Alex. McDonald (Cal.) herd.

Four hundred (400) head of Texas steers, branded with horse-shoe brand on left hip, known as the Fuller herd.

Four hundred and twenty-seven (427) head of Texas steers, known as the Warren Fenton herd, branded with a horse-shoe brand.

Three hundred and thirty-three (333) head of Texas steers, branded with a horse-shoe brand on the left hip, known as the Wm. Seltzer herd.

Three hundred and thirty-two (332) head of Texas steers, branded with a horse-shoe on the left hip, known as Clark E. Chipman herd.

Lot 1. Four hundred and twenty-four (424) head Texas cattle, branded with horse shoe behind left shoulder, open side up, Thomas Griffen herd.

Lot 2. Adam Dupee herd, four hundred and twenty, (424) head, branded horse-shoe behind left shoulder, open side down.

Lot 3. S. S. Blayton, four hundred and twenty-eight head (428), branded on the left hip horse-shoe, open side down.

Lot 4. John A. Taylor herd, two hundred and eight (208) head, branded with horse-shoe on left hip, open side down.

Lot 5. Henry Ottenger, one hundred and eighty-three (183) head and sixty-five (65) head, branded on left hip horse shoe, open side down.

Lot 6. Levi M. Philips herd, four hundred and twenty-three head (423), branded on the left hip with a horse-shoe, open side up.

Eight hundred and fifty-seven (857) head Texas steers, branded with a horse-shoe, and four hundred and seventy-five (475) head of Texas cows branded with a horse-shoe, herded near Kingville, Shawnee County, Kansas.

Total number of cattle six thousand six hundred and sixty-four (6,664) head. Said steers are worth $35.00 per head, and said cows
19 are worth $20.00 per head, and of the aggregate value of two hundred and twenty-three thousand two hundred and eighty (223,280.00) dollars.

III. The defendant unlawfully and wrongfully detains the said personal property, goods and chattels in his possession, and from the pos-

session of the said plaintiffs, and has so detained the same as aforesaid for the space of three days, to the plaintiffs' damage one hundred thousand dollars.

Wherefore the plaintiffs pray for an order against the said defendant, that he may be ordered to deliver the said personal property to the plaintiffs.

And also a judgment against the defendant for the said sum of ($223,280.00) two hundred and twenty-three thousand two hundred and eighty dollars, the value of said property, in case a return thereof cannot be had, and for one hundred thousand dollars, their damages sustained as aforesaid for the unlawful and wrongful detention of said property, and costs of suit.

MARTIN & CASE,
Attorneys for Plaintiffs.

Upon which are the endorsements following, to wit: No. 2582. Pierce & Reed vs. Spencer P. Wade. Amended petition. Filed Mar. 17, 1875. A. B. McCabe, clerk.

And that afterwards, to wit, on the 2nd day of April, A. D. 1875, said defendant filed in the clerk's office of said court in said cause his certain answer, in the words and figures following, to wit:

Answer to amended petition.

In the district court in and for Shawnee County, Kansas.

A'L H. PIERCE AND JAMES D. REED, partners doing business under the firm name of Pierce & Reed, plaintiffs, *vs.* SPENCER P. WADE, DEFENDANT.	Answer to amended petition.

1. For answer to plaintiffs' amended petition defendant says he
20 denies each and every all and singular the allegations therein contained.

For further answer defendant says that on the 13th day of July, 1874, an action was commenced in said district court, wherein Henry B. Cullum, as receiver of the First National Bank of Topeka, was plaintiff, and Andrew Wilson was defendant, for the recovery of $24,758.25, and interest thereon; and that afterwards, on the 24th day of Sept., 1874, the plaintiff therein caused an order of attachment to be issued in said action, and on the same day such order of attachment was duly issued by the clerk of said court, the said defendant being then and there and for a long time prior thereto, and continuously ever since then, the sheriff in and for the said county of Shawnee, and as such the said order of attachment was by him received on said last-mentioned day, and thereupon he did execute the said attachment by duly levying the same on the personal property mentioned and described in the plaintiffs' petition, and by virtue thereof took possession of the same, and retained possession thereof until the 10th day of October, 1874, when the whole of said personal property was taken from this defendant by S. E. Sheldon, as coroner of said Shawnee County, by virtue of an order of replevin issued out of said court in this action, and the same were thereupon by him delivered to the said plaintiffs, and no part thereof ever came to the hands of this defendant thereafter, but on the contrary the said

plaintiffs converted the same to their own use and benefit.

And this defendant further shows that afterwards, to wit, on the day of , 1875, the above-mentioned action, in which the said Henry B. Cullum, as receiver of the First National Bank of Topeka, was plaintiff, and the said Andrew Wilson was defendant, in which said attachment so levied as aforesaid on said personal property was issued as aforesaid, was duly tried and heard, and by the consideration of
21 said court the plaintiff therein did recover against the defendant therein, said Andrew Wilson, a judgment for the sum of $21,443.60, which remains in full force and wholly unsatisfied; and this defendant further shows that at the time he levied the said attachment on said personal property as aforesaid the said Andrew Wilson had custody and possession of the same, and was the owner thereof.

This defendant avers that said personal property, at the time the same was taken from him by virtue of said order of replevin, as aforesaid, was of the value of two hundred and twenty-three thousand dollars.

Wherefore defendant asks that plaintiff be adjudged to return said personal property to this defendant, and if a return thereof cannot be had, for a judgment against said plaintiffs for said sum of two hundred and twenty-three thousand dollars.

PECK & RYAN,
Attorneys for Defendant.

Upon which are the endorsements following, to wit: No. District court, Shawnee County, Kansas. Pierce & Reed vs. Spencer P. Wade. Answer to amended petition. Filed April 2, 1875. A. B. McCabe, clerk. Peck & Ryan, attorneys for defendant.

And that afterwards, to wit, on the 12th day of April, A. D. 1875, said plaintiffs filed in the clerk's office of said court in said cause their certain reply, in the words and figures following, to wit:

Reply.

STATE OF KANSAS,
County of Shawnee, ss:

In the district court for said county.

A. H. PIERCE AND JAMES D. REED, PARTNERS doing business under the firm-name of Pierce and Reed, plaintiffs, *vs.* SPENCER P. WADE, DEFENDANT. } Reply.

The plaintiffs, for a reply to the defendant's answer to the plaint-
22 iffs' amended petition, say:

They admit that on the 13th day of July, 1874, Henry B. Cullum, as receiver of the First National Bank of Topeka, commenced an action in said district court against one Andrew Wilson, for the purpose of recovering of said Wilson the sum of $24,758.25, and interest thereon, as stated in said defendant's answer, and they admit that on the 24th day of September, A. D. 1874, the said Cullum caused an order of attachment to be issued in said action, which order of attachment was directed to the defendant in this action, who then was and still is the sheriff of Shawnee County, Kansas.

And the plaintiffs admit that on the said 24th day of September, 1874, the said order of attachment came into the hands of said defendant, and that on the same day said defendant as such sheriff as aforesaid, by virtue of said order of attachment, attached the personal property mentioned in the plaintiff's petition as the personal property of the said Andrew Wilson, and that said defendant retained possession of said personal property from thence until the 10th day of October, A. D. 1874, when the same was taken from his possession by S. E. Sheldon, who then was and still is the coroner of the county of Shawnee, by virtue of the order of replevin heretofore issued in this action.

And the plaintiffs further admit that the said Cullum afterwards recovered a judgment against said Wilson in said action, as alleged in the defendant's answer, and that said judgment has not been fully paid; but the plaintiffs deny that said Wilson had the custody and possession of the said personal property at any time, and they deny that said Wilson ever was at any time the owner of said personal property, the whole or any part thereof, or that he had any interest therein, but, upon the contrary, these plaintiffs aver that on the 1st day of July, A. D. 1874, and for a long time before that day, and from thence continuously
23 to the present time, they were and still are the legal owners and entitled to the immediate possession of the said personal property, the whole and every part, piece, parcel, and lot thereof, and this they are ready to prove.

Wherefore they ask judgment as in their amended petition demanded.

MARTIN & CASE,
Attorneys for Plaintiffs.

Upon which are the following endorsements, to wit: Pierce & Reed vs. S. P. Wade. 2582. Reply. Filed April 12th, 1875. A. B. McCabe, clerk.

And that afterwards, to wit, on the 14th day of May, A. D. 1875, said defendant filed in the clerk's office of said court in said cause his certain petition for the removal of said cause to the U. S. circuit court, which petition is in the words and figures following, to wit:

Petition for removal.

STATE OF KANSAS,
County of Shawnee, ss:

In the district court for said county.

ABEL H. PIERCE & JAMES D. REED, PARTNERS in business under the firm name of Pierce & Reed, plaintiffs,
vs.
SPENCER P. WADE, DEFENDANT.

Petition for removal to the circuit court of the United States of America for the district of Kansas.

To the honorable the district court of the 3rd judicial district of the State of Kansas, sitting in and for the county of Shawnee, in said State.

The petition of S. P. Wade, of Shawnee County, respectfully shows

that your petitioner is the defendant in this suit, and that the same was brought by Abel H. Pierce, James D. Reed, partners as
24 Pierce and Reed, on or about the 9th day of October, 1874, in the district court of the 3rd judicial district of the State of Kansas, in and for the county of Shawnee, in said State, and that said plaintiffs are and were at the time of bringing this suit citizens of the State of Texas, and that your petitioner is and was at the time of bringing this suit a citizen of the State of Kansas, and in which said suit there is therefore a controversy between citizens of different States.

And your petitioner further shows that the said plaintiffs' claim in the petition in this suit is for personal property of the value of two hundred and twenty-three thousand two hundred and eighty dollars, and the further sum of one hundred thousand dollars as damages against your petitioner, and that the matter in dispute in this suit therefore exceeds the sum of five hundred dollars, exclusive of costs.

Your petitioner further respectfully represents that this suit is brought by plaintiff against the said defendant, demanding the recovery from said defendant of six thousand six hundred and sixty-four head of Texas cattle of *of* the value of two hundred and twenty-three thousand two hundred and eighty dollars, and the sum of one hundred thousand dollars for the unlawful detention of said cattle; that there are no other parties plaintiff or defendant to this suit than such as are hereinbefore mentioned.

Your petitioner further shows that this suit has not been tried, but that the same is pending for trial in the district court of the 3rd judicial district of the State of Kansas, in and for the county of Shawnee, in said State, and that this petition is made and filed in said court at this April, A. D. 1875, term thereof, that being the term of said court at which this suit could first be tried, and that your petitioner desires to remove this suit, before the trial thereof, into the circuit
25 court of the United States to be held in the district of Kansas, in the eighth circuit, in pursuance of the provisions of law as contained in the act of Congress, approved March 3rd, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States, and to regulate the removal of causes from State courts, and for other purposes." That he is ready and willing to give such good and sufficient surety as this court may direct for his doing all acts and things required to be done by the said provisions of law upon the removal of a suit into the United States court, and he offers herewith his bond executed by Olive A. Adams, of the county of Shawnee, in the State of Kansas, as surety, in the penal sum of five hundred dollars, conditioned that your petitioner shall enter in the next circuit court of the United States to be held in the district of Kansas, in the eighth circuit, on the first day of its next session, a copy of the record and of all process, pleadings, depositions, testimony, and other proceedings in this suit, and for the paying all costs that may be awarded by the said circuit court of the United States for the district of Kansas, if it shall hold that this suit was wrongfully or improperly removed thereto, and also for appearing in said circuit court of the United States and entering special bail in such suit if special bail be required therein, and for the doing of such other appropriate acts as by the said act of Congress, approved March 3rd, 1875, are required to be done upon the removal of a suit into the United States court, as good and sufficient surety according to the said provisions of law upon the removal of a suit into the United States courts.

Your petitioner therefore prays that the said bond may be accepted as

good and sufficient surety according to the said provisions of law, and that this suit may be removed into the next circuit court of the United States to be held in the district of Kansas, in the eighth circuit,
26 pursuant to the statute of the United States in such case made and provided, and that no further proceedings may be had therein in this court.

And your petitioner will ever pray, &c.

S. P. WADE.

PECK & RYAN,
Attorneys for Petitioner.

STATE OF KANSAS,
Shawnee County, ss:

Spencer P. Wade, of lawful age, being duly sworn, on his oath says, that he is the petitioner mentioned in the above and foregoing petition, and whose name is signed thereto; he further says that he has heard the said petition read and knows the contents thereof, and that the same is true of his knowledge except the matters and things stated on information and belief, and as to those matters he believes it to be true.

S. P. WADE.

Subscribed and sworn to before me by the S. P. Wade this 14th day of May, 1874.

[SEAL.] A. B. McCABE, *Clerk.*

Upon which are the following endorsements, to wit: Pierce & Reed vs. Spencer P. Wade. Petition for removal into U. S. circuit court. Filed May 14th, 1875. A. B. McCabe, clerk. Peck & Ryan, att'ys for def't.

And that afterwards, to wit, on the 14th day of May, A. D. 1875, said defendant filed in the clerk's office of said court, in said cause, his certain bond in the words and figures following, to wit:

Bond for removal.

In the district court in and for Shawnee County, Kansas.

A. H. PIERCE & JAMES D. REED, PARTNERS in business under the firm name of Pierce & Reed, plaintiffs,
vs.
27 SPENCER P. WADE, DEFENDANT.

We, Spencer P. Wade, of Shawnee County, in the State of Kansas, as principal, and Olive A. Adams, as surety, are held and firmly bound into A. H. Pierce and James D. Reed, partners as Pierce & Reed, of County, State of Texas, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said A. H. Pierce & James D. Reed, their successors or assigns, for which payment, well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, dated this day of May, A. D. 1875.

Whereas a suit was brought on or about the 9th day of October, 1874, in the district court of the third judicial district of the State of Kansas, in and for the county of Shawnee, Kansas, by the said A. H. Pierce & James D. Reed, partners as Pierce & Reed, against the said Spencer P.

Wade, and the same is now pending for trial in the district court of the 3rd judicial district of the State of Kansas, in and for the county of Shawnee, in said State, and is removable in the circuit court of the United States for the district of Kansas, in the eighth circuit, under the act of Congress, approved March 3, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States"; and whereas the said Spencer P. Wade has filed his petition in said third judicial district of the State of Kansas, in and for the county of Shawnee, in said State, for the removal of said suit into the next circuit court of the United States to be held in the State of Kansas:

Now, therefore, the condition of the above obligation is such, that if the above bounden Spencer P. Wade, or his legal representatives, shall enter or cause to be entered in the circuit court of the United States for the district of Kansas, on the first day of its stated session next ensuing after the order of the said district court of the third judi-
28 cial district of the State of Kansas, in and for the county of Shawnee, in said State, for the removal of said suit into the said circuit court of the United States, a copy of the record of all process, pleadings, depositions, testimony, and other proceedings in said suit, and shall pay all costs that may be awarded by the said circuit court of the United States if said circuit court shall hold that said suit was wrongfully or improperly removed thereto, and shall there appear and enter special bail in said suit if special bail was originally required therein, and shall do or cause to be done such other appropriate acts as by said act of Congress, approved March 3rd, 1875, are required to be done upon the removal of a suit into the United States court, then the above obligation to be void, otherwise to be and remain in full force and virtue in law.

S. P. WADE. [SEAL.]
OLIVE A. ADAMS. [SEAL.]

STATE OF KANSAS,
County of Shawnee, ss:

Olive A. Adams, the surety in the foregoing obligation named, being duly sworn, deposes and says that she is a resident of the State of Kansas, and a householder therein, and is worth the sum of ten hundred dollars over all her just debts, liabilities, and exclusive of property exempt by law from execution.

OLIVE A. ADAMS.

Subscribed and sworn to before me this 14th day of May, A. D, 1875.
[SEAL.] G. C. CLEMENS,
Notary Public.

Upon which bond were the endorsements following, to wit: 2582. Pierce & Reed vs. S. P. Wade. Bond. Filed May 14, 1875. A. B. McCabe, clerk.

And that afterwards, to wit, on the 14th day of May, A. D. 1875, at the April term, A. D. 1875, of the court aforesaid, among other were had the following proceedings to wit:

29 *Journal entry.*

ABEL H. PIERCE AND JAMES D. REED, partners in business under the firm name of Pierce & Reed, plaintiffs,
vs.
SPENCER P. WADE, DEFENDANT. } 2582.

And now comes the said defendant, by Peck & Ryan, his attorneys,

and files his petition and bond for the removal of this cause from this court to the circuit court of the United States for the district of Kansas, in the 8th circuit thereof, and said petition and bond being accepted by the court, it is ordered that this cause be removed from this court to the said circuit court of the United States for the district of Kansas, in the 8th circuit thereof, in accordance with the provisions of an act of Congress entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes," approved March 3rd, 1875, and that the clerk of this court, upon payment to him of the legal fees, do certify to said circuit court of the United States a full transcript of the record and of all pleadings, depositions, and testimony in said cause.

STATE OF KANSAS,
Shawnee County, ss:

I, A. B. McCabe, clerk of the district court in and for Shawne, County, Kansas, do hereby certify the above and foregoing is a full true, and correct transcript of the record and pleadings, depositions, and testimony in the above-entitled cause, as fully as the same remains of record and on file in my office.

Witness my hand and the seal of said court hereto affixed, at my office in the city of Topeka, this 5th day of June, A. D. 1875.

[SEAL.] A. B. McCABE, *Clerk.*

30 Costs in Shawnee County district court, $34.05; costs of transcript, paid by def't Cullum, $8.65—$42.70.

(Endorsed:) No. 1311. Pierce & Reed vs. S. P. Wade. Transcript from Shawnee Co. Filed June 7, 1875. A. S. Thomas, clerk. Peck & Ryan, att'ys for def't.

And on this day, to wit, the 2d day of December, 1875, in the November term of said court, in the record of the proceedings in the above-entitled action is the following entry in the words and figures following, to wit:

Journal entry.

PIERCE & REED } 1311.
vs.
S. P. WADE }

THURSDAY, *December* 2, 1875.

On motion of defendant herein, it is ordered by the court, that said defendant have leave to amend his answer in this action in thirty days by setting up attachment and judgment of the Valley National Bank; and it is further ordered by the court that this cause be, and the same is hereby, continued until the next term of this court.

Journal entry.—Order appointing special marshal.

PIERCE & REED, PLAINTIFFS, } 1311.
vs.
SPENCER P. WADE, DEFENDANT. }

FRIDAY, *December* 10, 1875.

On motion of the plaintiffs in the above action, it is ordered that

Chester Thomas, jr., of Shawnee County, Kansas, be, and he is hereby appointed a special marshal to serve all processes, orders, or notices to be hereafter served in the above-entitled action.

31 *Journal entry—.Leave to amend petition.*

ABEL H. PIERCE AND JAMES D. REED, PLFTS,
vs.
SPENCER P. WADE, DEF'T. } 1311.

FRIDAY, *December* 10, 1875.

And now comes the plaintiffs by Martin & Case, their attorneys, and also comes the defendant by Peck & Ryan, his attorneys, and thereupon the plaintiffs move the court for leave to amend generally their petition herein and to make William S. Tough and Charles L. Vanderpool defendants herein; which motion is granted, subject to the right of said persons to object thereto and the right to make objections to said amendment is fully reserved, and the plaintiffs are given sixty days from this date in which to file an amended petition herein, and that upon the filing of said amended petition, that a summons be issued and served upon said Tough and Vanderpool, and that they be required to file their objections to or plead to or to answer said amended petition within the time required by the laws of the State of Kansas.

It is further ordered, that the defendant Wade have ninety days from this date in which to file an amended answer to the plaintiffs' amended petition, if he so desires. It is further ordered, that this action be continued until the next term of this court, and that the same be set for trial on the second day of said term.

JOHN F. DILLON, *Judge.*

And on this day, to wit, the 19th day of January, 1876, the said defendant, by Ruggles & Sterry and Clemens & Rossington, his attorneys, filed in the clerk's office of said court his amended answer in the above entitled action; which said amended answer with the endorsements thereon is in the words and figures following, to wit:

32 *Amended answer.*

In the circuit court of the United States for the district of Kansas.

ABEL H. PIERCE AND REED, PLAINTIFFS,
vs.
SPENCER P. WADE, DEFENDANT. } Amended answer.

And now comes the said Spencer P. Wade, defendant, and by leave of court first duly had and obtained, for a further and additional defense to that contained in his answer heretofore filed herein, says:

I. That said plaintiff should not have his said action against the said defendant, for he says that he denies all and singular the allegations and averments in said petition contained in manner and form as the same are therein stated.

II. That on the 8th day of September, 1874, and prior thereto and continuously since, he was and has been the sheriff of the county of Shawnee, in the State of Kansas, duly elected, qualified, and acting as such.

That on the 7th day of September, A. D. 1874, the Valley National

Bank of St. Louis, a corporation duly organized under and in accordance with the provisions of the act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864, and carrying on its business under its charter at the city of St. Louis, in the State of Missouri, duly commenced its civil action against one Andrew Wilson, in the district court in and for Shawnee *Shawnee* County, in the State of Kansas, for the recovery from the said Andrew Wilson of the sum of twelve thousand dollars, with interest thereon from the 25th day of July, 1873, and on the 8th day of September, A. D. 1874, duly caused an attachment to be issued in said action out
33 of said court against the property of the said Andrew Wilson, directed to the said sheriff of said county, for the amount so as aforesaid sued for, together with fifty dollars, the probable costs of said action, and duly caused the same to be delivered to this defendant as sheriff aforesaid; and said defendant as sheriff as aforesaid afterwards, to wit, at 9 o'clock p. m. of the 24th day of September, A. D. 1874, duly levied said attachment on the property described in the petition of said plaintiffs.

That subsequently there was duly delivered to said defendant as sheriff as aforesaid, the attachment set forth in the prior answer of the defendant, which answer is made a part hereof and to be taken in connection herewith, and said subsequent attachment was duly levied by said defendant, as in said prior answer alleged, upon said property as property already in the hands of this defendant as sheriff as aforesaid, under said levy herein described and alleged, and said defendant held said property in said petition described by virtue and authority of said levies at the time of the commencement of this action and until taken from his possession under the writ of replevin herein; that said property was the property of the said Andrew Wilson at the time of said levies respectively, and said levies were made upon said property as the property of the said Andrew Wilson.

RUGGLES & STERRY, &
CLEMENS & ROSSINGTON,
Attorneys for Defendant.

No objection to the filing of this amended answer, & the clerk will please make me a copy of the same.

MARTIN & CASE,
Attorneys for Pl'f.

(Endorsed:) No. 1311. In the circuit court of the United States for the district of Kansas. Pierce and Reed, p'ffs, vs. Spencer P. Wade, def't. Amended answer. Filed Jan'y 19, 1876. A. S. Thomas, clerk.

34 And on this day, to wit, the 24th day of January, 1876, the said plaintiffs, by Martin & Case, their attorneys, filed in the clerk's office of said court their amended petition in the above-entitled action; which said amended petition with the endorsements thereon is in the words and figures following, to wit:

Amended petition.

UNITED STATES OF AMERICA,
District of Kansas, ss :

In the circuit court of the United States for the eighth circuit and district of Kansas.

ABEL H. PIERCE AND JAMES D. REID, PARTners in business under the firm name of Pierce & Reid, plaintiffs,
vs.
SPENCER P. WADE, WILLIAM S. TOUGH, AND Charles L. Vanderpool, defendants.

No. 1311. Amended petition.

The plaintiffs say :

I. They were at the commencement of this action and still are partners in business under the firm name of "Pierce & Reid."

II. They were at the commencement of this action and still are the legal owners of and were then and still are entitled to the immediate possession of the following-described personal property, namely :

Four hundred and thirty-three (433) head of Texas steers, branded with horseshoe brand on left side, known as the Murphy herd.

Four hundred (400) head of Texas steers, branded with horseshoe brand on left hip, known as the Abe Wood herd.

Four hundred (400) head of Texas steers, branded with horseshoe brand on left hip, known as the Clark West herd.

Four hundred and forty-two (442) head of Texas steers, branded with horseshoe brand on left hip, knows as the Alex. McDonald (Cal.) herd.

Four hundred (400) head of Texas steers, branded with horse-
35 shoe brand on left hip, known as the Fuller herd.

Four hundred and twenty-seven (427) head of Texas steers, known as the Warren Fenton herd, branded with a horseshoe brand.

Three hundred and thirty-three (333) head of Texas steers, branded with a horseshoe brand on the left hip, known as the Wm. Seltner herd.

Three hundred and thirty-two (332) head of Texas steers, branded with a horseshoe on the left hip, known as Clark E. Chipman herd.

Lot 1. Four hundred and twenty-four (424) head of Texas cattle, branded with horseshoe behind left shoulder, open side up, Thomas Griffen herd.

Lot 2. Adam Dupee herd, four hundred and twenty-four (424) head, branded horseshoe, behind left shoulder, open side down.

Lot 3. S. S. Blayton herd, four hundred and twenty-eight (428) head, branded on the left hip, horseshoe, open side down.

Lot 4. John A. Taylor herd, two hundred and eight head (208), branded with horseshoe on left hip, open side down.

Lot 5. Henry Ottenger herd, one hundred and eighty-three (183) head, and sixty-five head, branded on left hip, horseshoe, open side down.

Lot 6. Levi M. Phillips herd, four hundred and twenty-three head (423), branded on the left hip with a horseshoe, open side up, which said herd is also called and known as the Tom Walker herd, & is one & the same herd.

Eight hundred and fifty-seven (857) head of Texas steers, branded with

a horseshoe, known as the Meeta & Dummer herds, near Kingville, Shawnee County, Kansas, and includes both of said herds.

Four hundred and seventy-five (475) head of Texas cows, branded with a horseshoe, herded near Kingsville, Shawnee County, Kansas, which herd is also called & known as the Otey Lawen herd, &
36 is the same herd as they Otey Lawen herd.

Total number of cattle, six thousand six hundred and sixty-four (6,664) head. Said steers are worth $35.00 per head, and said cows are worth $20.00 per head, and of the aggregate value of two hundred and twenty-three thousand two hundred and eighty ($223,280.00) dollars.

III. The defendants before and at the time of the commencement of this action unlawfully and wrongfully detained the said personal property, goods, and chattels in their possession and from the possession of the said plaintiffs, and had so detained the same as aforesaid for the space of three days before the commencement of this action, to the plaintiffs' damage one hundred thousand dollars.

Wherefore the plaintiffs pray for an order against the said defendants, that they may be ordered to deliver the said personal property to the plaintiffs, and also a judgment against the defendant, for the said sum of ($223,280.00) two hundred and twenty-three thousand two hundred and eighty dollars, the value of said property, in case a return thereof cannot be had, and for one hundred thousand dollars, their damages sustained as aforesaid for unlawful and wrongful detention of said property, and costs of suit.

MARTIN & CASE,
Attorneys for Plaintiffs.

(Endorsed:) No. 1311. Pierce and Reid vs. S. P. Wade & others. No. 1311. Amended petition. Filed Jan'y 24, 1876. A. S. Thomas, clerk.

And on this day, to wit, the 25 day of May, 1876, the said plaintiffs, by their attorneys, filed in the clerk's office of said court their reply to the amended answer in the above-entitled action; which said reply with the endorsements thereon is in the words and figures following, to wit:

37 *Reply to amended answer.*

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

ABEL H. PIERCE AND JAMES D. REID, PLAINTIFFS, *vs.* SPENCER P. WADE, DEFENDANT. } No. 1311. Reply to amended answer.

The plaintiffs for reply to the second defense stated in the defendant's amended answer filed herein on the 19th day of January, 1876, says:

They deny each and every allegation and averement made and contained in the said second defense stated in said amended answer.

Wherefore plaintiffs pray judgment as in their petition demanded.

MARTIN & CASE,
Attorneys for Plaintiffs.

(Endorsed:) Abel H. Pierce & James D. Reid vs. Spencer P. Wade. No. 1311. Reply to amended answer. Filed May 25, 1876. A. S. Thomas, clerk.

And on this day, to wit, the 7th day of June, 1876, the said defendants Tough and Vanderpool, by their attorneys, filed in the clerk's office of said court their motion to strike out, &c., in the above-entitled action; which said motion with the endorsements thereon is in the words and figures following, to wit:

Motion.

In the United States circuit court for the district of Kansas.

ABEL H. PIERCE, JAMES D. REID, PARTners in business under the firm name of Pierce & Reid, pl'ff,
vs.
SPENCER P. WADE & OTHERS, DEFEND'TS.

Come now the defendants W. S. Tough and C. L. Vanderpool, and move the court to strike from the files in this case the amended petition hereto, filed for reasons apparent on the record.

38

W. P. DOUTHITT,
GUTHRIE & BROWN,
Att'ys for Tough & Vanderpool.

(Endorsed:) No. 1311. Pierce & Reed vs. S. P. Wade & others. Motion to strike out the amended petition. Filed June 7, 1876. A. S. Thomas, clerk.

And on this day, to wit, the 9th day of June, A. D. 1876, in the June term of said court, in the record of the proceedings in the above-entitled action is the following entry in the words and figures following, to wit:

Journal entry.

PIERCE & REED, PLAINTIFFS,
vs.
S. P. WADE. } 1311.

FRIDAY, *June* 9, 1876.

On motion of said plaintiffs, it is ordered by the court that the plaintiffs have leave to withdraw their last amended petition herein.

Judgment.

ABEL H. PIERCE & JAMES D. REID
vs.
SPENCER P. WADE. } 1311. Replevin.

WEDNESDAY, *June* 14, 1876.

Now come the pl'ffs, Abel H. Pierce & Jas. D. Reid, by their att'ys, Martin & Case & L. C. Slavens, and also comes the def't by Peck & Ryan, Ruggles & Sterry, & Clemens & Rossington, their att'ys, and by agreement in writing duly signed by the parties to this action, & herein filed, a jury is waived, and this cause is submitted to the court for trial, and upon the proofs and allegations by the parties submitted the court finds:

1st. That the pl'ffs were at the commencement of this action the own

ers of and entitled to the immediate possession of all the cattle & personal property mentioned and described in the amended petition
39 herein filed, except sixty-two head of Texas steers branded "A W", and constituting a part of the herd known as the Dummer herd.

2nd. On the 24th day of September, 1874, an order of attachment was duly issued out of district court for Shawnee County, Kansas, in an action then pending in said court, wherein Henry B. Cullum, as receiver of the First National Bank, Topeka, Kansas, was pl'ff, and one Andrew Wilson was def't, which said order of attachment was directed to & came into the possession of said def't on said day, who was then & still is sheriff of said county of Shawnee, commanding def't as such sheriff to attach & safely keep the lands, tenements, goods, & chattels, &c., of the said Andrew Wilson, to satisfy a debt of $29,860.00; that by virtue of said order of attachment def't did attach, as the property of said Wilson, 875 head of Texas steers, branded with a horse-shoe mark, & known as the Dummer herd, in said county.

3d. The court finds, that at the time of the levy of said writ of attachment on said herd there were included therein 62 head of Texas steers, branded "A W", that were the property of said Andrew Wilson.

4th. Said sixty-two head of steers were in said herd when the writ of replevin in this suit was executed by the coroner of Shawnee County, and were delivered to the pl'ffs by the coroner along with the horse shoe brand of cattle sued for by the pl'ffs in this action, and were shipped along with pl'ffs' cattle to Kansas City, Mo.

5th. Pl'ff had no knowledge that these sixty-two head of cattle branded "A W" were with the said horse-shoe brand of cattle by them replevined and shipped to Kansas City, as aforesaid, until the catttle arrived at Kansas City, and were sold and weighed.

The pl'ffs received & paid over to Andrew Wilson the net pro-
40 ceeds of 62 head of said 62 *head of* cattle.

6th. Pl'ffs did not know at the time of the execution of said writ of replevin or at the time of the delivery of them to pl'ffs by the coroner, that any part of said 62 head of Texas steers, branded "A W", had been attached by the def't as sheriff, or were included in the herd of *of* cattle taken by the coroner by said writ of replevin, nor were said last-named cattle included or intended to be included in the receipt given by pl'ff to the coroner for the cattle replevined.

That said 62 head of cattle were of the value of $1,400.00; and the court further finds as a conclusion of law that the defendant was at the commencement of this action entitled to the immediate possession of said sixty-two head of Texas steers, branded "A W," as aforesaid, and are entitled to a return thereof, or the value of the same, in case a return thereof cannot be made.

To which findings of fact and conclusions of law the pl'ffs except.

It is therefore considered and adjudged by the court that the pl'ffs do have & recover from the said defendant the possession of all the cattle & personal property described in their petition, except sixty-two head of Texas steers, branded "A W" and being a part of the Dummer herd.

And it is further considered and adjudged by the court that the defendant do have and recover from the pl'ffs the possession of said sixty-two head of Texas steers branded "A W" and being a part of the Dummer herd, and that said plaintiffs return said sixty-two head of Texas steers to the defendant; and in case a return thereof cannot be had, that said defendant do have & recover from the pl'ffs the said sum of fourteen hundred dollars, the value thereof, as aforesaid, and hereof let execution

issue; and it is further ordered and adjudged by the court
41 that the plaintiffs do recover from the defendant $200 of the costs herein expended, and no more, and hereof let execution issue, and that said defendant have and recover of the plaintiff the balance of the costs herein, taxed at $.

To which judgment & orders of the court in favor of the defendant & against the plaintiffs, the plaintiffs except.

JOHN F. DILLON, *Judge.*

And on this day, to wit, October 23, 1876, the plaintiffs filed in the clerk's office of said court their appeal bond in said action; which said peal bond is in words and figures following, to wit:

Appeal bond.

Circuit court of the United States for the district of Kansas.

Know all men by these presents that we, G. B. Inge and J. W. L. Slavens, are held and firmly bound unto Spencer P. Wade in the sum of three hundred dollars, to be paid to said Wade, his heirs, executors, and administrators; to the payment of which well and truly to be made we bind ourselves, and each of us jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this October 14th, 1876.

The condition of this obligation is such, that whereas the said Spencer P. Wade has recovered a judgment in the circuit court of the United States for the district of Kansas against Abel H. Pierce and James D. Reed for the return of certain cattle therein described, and for the sum of fourteen hundred dollars, the value thereof, in case a return cannot be had, which said judgment was rendered at the May term of
42, 43 said court held at the city of Leavenworth in said State of Kansas; and whereas the said Abel H. Pierce and James D. Reed, in order to obtain a reversal of the same, has sued out a writ of error to the Supreme Court of the United States: Now, therefore, if said Abel H. Pierce and James D. Reed shall prosecute their said writ of error to effect and shall answer and pay all costs if he shall to make good his plea, then this bond shall be void, otherwise to remain in full force and virtue.

J. W. L. SLAVENS. [SEAL.]
G. B. INGE. [SEAL.]

Approved:

C. G. FOSTER, *Judge.*

(Endorsed:) No. 1311. Pierce & Reed vs. Spencer P. Wade. Bond for costs. Filed Oct. 23, 1876. A. S. Thomas, clerk.

44 UNITED STATES OF AMERICA,
District of Kansas, ss:

I, A. S. Thomas, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and perfect copy from the record of all the proceedings in the action of Abel H. Pierce and James D. Reed, partners in business under the firm name of Pierce & Reed, vs. Spencer P. Wade, No. 1311 in said court.

In testimony whereof, I have hereunto set my hand and affixed the

seal of said court, at my office in Topeka, in said district of Kansas, this second day of January, A. D. 1877.

[SEAL.] A. S. THOMAS, *Clerk.*

45

46 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Kansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between Abel H. Pierce and James D. Reed, partners in business under the firm name of Pierce & Reed, plaintiffs, and Spencer P. Wade, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 23rd day of October, A. D. 1876.

[SEAL.] A. S. THOMAS,
Clerk of the Circuit Court of the United States for the District of Kansas.

Allowed:

C. G. FOSTER, *Judge.*

47 (Indorsed:) No. 1311. Pierce & Reed vs. Spencer P. Wade. Writ of error. Filed Nov. 29, 1876. A. S. Thomas, clerk.

48 UNITED STATES OF AMERICA, *ss:*

To Spencer P. Wade:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Kansas, wherein Abel H. Pierce and James D. Reed are plaintiffs, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness,

C. G. FOSTER, *Judge.*

We hereby acknowledge service of the above citation upon us this the 1st day of December, 1876.

(In pencil:) PECK & RYAN,
Att'ys for Def't.
(In pencil:) G. C. CLEMENS,
Att'y for Defendant.

49 (Indorsed:) No. 1311. Pierce & Reed vs. Spencer P. Wade. Citation. Filed Dec. 1, 1876. A. S. Thomas, clerk.

(Indorsement on cover:) No. 187. Abel H. Pierce and James D. Reed, partners as Pierce & Reed, plaintiffs in error, vs. Spencer P. Wade. Kansas C. C. U. S. Filed 26th September, 1877.

NO. 187.

In the Supreme Court of the United States.

ABEL H. PIERCE and JAS. D. REED,

vs.

SPENCER P. WADE.

L. C. SLAVENS,
NELSON COBB,
Att'ys for Plaintiffs in Error.

Moore, Printer, Kansas City.

NO. 187.

In the Supreme Court of the United States.

ABEL H. PIERCE and JAS. D. REED,

vs.

SPENCER P. WADE.

This is an action of replevin brought by plaintiffs, to recover some two thousand eight hundred and ninety-seven head of cattle, which defendant, as sheriff of Shawnee county, Kansas, had levied upon by virtue of writs of attachment duly issued against A. Wilson.

All these cattle sued for, are described in the petition, affidavit for replevin, and writ of replevin, as being branded with a "horse shoe" brand.

It happened that in one of these herds of "horse shoe" cattle sued for by plaintiffs, there were mixed in some 62 head of steers branded "A. W.," which belonged to A. Wilson.

And although plaintiffs, as shown by their petition, did not sue for any cattle branded "A. W.," but sued only for those branded with the "horse shoe" brand, and did not know that any "A. W." cattle were among those which they sued for, the officer executing the writ of replevin, turned over to plaintiffs the 62 "A. W." cattle along with the "horse shoe" cattle sued for—all the parties at the time being ignorant of the fact that there were any "A. W." cattle among the "horse shoe" herds.

The defendant does not even claim, in his answer, that, as sheriff, he ever levied upon or held any "A. W." cattle, but simply avers that he had levied upon the cattle "mentioned and described in the petition;" and it appears from the second finding of the court below, that he intended to levy on the "horse shoe" brand of cattle only.

The special findings of the court are as follows:

"Now come the plaintiffs Abel H. Pierce and Jas. D. Reed, by their Attorneys, Martin & Case and L. C. Slavens, and also comes the defendant, by Peck & Ryan, Ruggles & Story and Clemens & Rossington, their attorneys, and by agreement in writing, duly signed by the parties to this action, and herewith filed, a jury is waived, and this cause is submitted to the court for trial, and upon the proofs and allegations by the parties submitted, the court finds:

I.

That the plaintiffs were, at the commencement of this action, the owners of, and entitled to the immediate possession of all the cattle and personal property mentioned and described in the amended petition herein filed, except sixty-two head of Texas steers branded "A. W.," and constituting a part of the herd known as the Dummer herd.

II.

On the 24th day of Sept., 1874, an order of attachment was duly issued out of the District Court for Shawnee county, Kansas, in an action then pending in said Court, wherein Henry B. Cullum, as receiver of the First National Bank, Topeka, Kansas, was plaintiff, and one Andrew Wilson was defendant, which said order of attachment was directed to, and came into the possession of said defendant on said day, who was then, and still is, sheriff of said county of Shawnee, commanding defendant, as such sheriff, to attach and safely keep the lands, tenements, goods and chattels, &c., of the said Andrew Wilson, to satisfy a debt of $29,860.00; that by virtue of said order of attachment defendant did attach, as the property of said Wilson 875(857) *head of*

Texas steers, branded with a horse shoe mark, and known as the Dummer herd, in said county.

III.

The court finds, that at the time of the levy of said writ of attachment on said herd, there were included therein sixty-two head of Texas steers branded "A. W.," that were the property of A. Wilson.

IV.

Said sixty-two head of steers were in said herd when the writ of replevin in this suit was executed by the coroner of Shawnee county and were delivered to the plaintiffs by the coroner *along with the horse shoe brand of cattle sued for by the plaintiffs in this action,* and were shipped along with plaintiffs' cattle to Kansas City, Missouri.

V.

The plaintiffs had no knowledge that these sixty-two head of cattle, branded "A. W." were with the said horse shoe brand of cattle *by them replevined* and shipped to Kansas City as aforesaid, until the cattle arrived at Kansas City and were sold and weighed. The plaintiffs received and paid over to Andrew Wilson, the net proceeds of said sixty-two head of cattle.

VI.

Plaintiffs did not know at the time of the execution of said writ of replevin, or at the time of the delivery of them to plaintiffs by the coroner, that any part of said 62 head of Texas steers branded "A. W." had been attached by the defendant, as sheriff, *or were included* in the herd of cattle taken by the coroner by said writ of replevin, nor were said last named cattle *included, or intended to be included* in the receipt given by the plaintiffs to the coroner for the cattle replevined That said 62 head of cattle were of the value of $1,400.00 And the court further finds, as a conclusion of law, that the defendant was at the commencement of this action entitled to the immediate possession of said sixty two head of Texas steers branded "A. W."

as aforesaid, and are entitled to a return thereof, or the value of the same in case a return thereof cannot be made.

To which findings of facts and conclusions of law the plaintiffs except."

Upon the above findings and conclusions of law the court gave judgement in favor of plaintiffs, for all the cattle described in their petition, except sixty-two head of Texas steers branded "A. W." (which were *not* described in their petition or sued for in this action,) and in favor of the defendant for said sixty-two head of Texas steers branded "A. W.," and in case return thereof could not be had, a judgment for their value—$1,400.

ERROR.

The court erred in finding as a conclusion of law, that the defendant was entitled to the possession of the sixty-two head of "A. W." cattle, and to a return thereof, or their value if a return could not be made, and in rendering judgment accordingly; because said "A. W." cattle were not in issue in this suit. Not only the pleadings; but the 5th finding of the court shows this. In this 5th finding the court finds that "plaintiffs had no knowledge that these sixty-two head of cattle branded "A. W." were *with* the said horse shoe brand of cattle *by them replevined* and shipped to Kansas City as aforesaid, until the cattle arrived at Kansas City and were sold and weighed." If plaintiffs did not know the "A. W." cattle were with the horse shoe cattle by them replevined, &c., they certainly could not have intended to replevin them, and in fact, as their petition shows, they did not sue for them at all.

This is further apparent from the sixth finding of the court, the first part of which is as follows:

"VI. Plaintiffs did not know at the time of the execution of said writ of replevin, or at the time of the delivery of them to plaintiff by the coroner, that any part of said 62 head of Texas steers branded "A. W." had been attached by the defendant, as sheriff, *or were included* in the herd of cattle taken by the coroner by said writ of replevin; nor were said last named cattle *included, or intended to be included,* in the receipt given by plaintiffs to the coroner for the cattle replevied."

It must be remembered that Texas cattle are not kept in enclosures, but being of a wild nature, are grazed in herds on the plains, and are bought and sold by the "brand;" and it is not uncommon to find in any herd, cattle that have strayed in from other neighboring herds.

AUTHORITIES.

In Lovensohn *et al.*, *vs.* Galland *et al.*, 45 Cal., p. 8, the court says:

"The action is replevin, and the subject matter of the litigation in such case necessarily consists *only* of the property described in the complaint, and it is not competent to the defendant by his answer, to introduce a new and distinct subject matter of litigation, by claiming of the plaintiffs the release and return of other and distinct personal property, even though he present such a case as would have enabled him to recover in an independent action."

The same principle is decided in Shelton *vs.* Franklin, 68 Ills., p. 333, where it is held that, in replevin, the verdict of the jury must be consistent with the issues presented by the pleadings.

But it seems to me, authority is not needed on so plain a proposition.

The ruling of the court below is not only unjust to the plaintiffs, but if upheld, must seriously affect their bondsmen, by enlarging their liability.

These bondsmen knew that plaintiffs were the owners of the "horse shoe" cattle; they saw from the petition and affidavit for replevin that plaintiffs had sued for "horse shoe" cattle only, and hence, were willing to go on their bond; and it would be an outrage to make them liable for the return, or value, of any *other* cattle, which, by chance, might have been delivered to plaintiffs by the officer executing the writ of replevin, along with the cattle sued for.

JURISDICTION.

The amount in controversy in this suit, as shown by the affidavit of replevin, filed by A. H. Pierce at the commencement

of the suit is over 80,000.00, to say nothing of the damages claimed.

In Walker *vs.* United States, 4th Wallace, p. 163, the Chief Justice delivering the opinion of the Court says:

"It has been a good deal controverted whether the sum or value in controversy is to be determined by reference to the amount claimed, or the amount of the judgment, or the amount in dispute in this court. It has long been settled, however, that when the judgment is for the defendant, or for the plaintiff, and for less than two thousand dollars, and the *plaintiff* sues out the writ of error, this court has jurisdiction if the damages claimed in the declaration exceed that sum; but that if the judgement is for the plaintiffs and not more than two tnousand dollars, and the *defendant* prosecutes in error, this court has not jusisdiction, for the amount in controversy, as to the defendant, is fixed by thejudgment."

In the case at bar, the judgment is against the plaintiffs and though for less than $500.00, this court has jurisdiction because the plaintiffs prosecute error, and the amount in controversy in this suit is the value of the property claimed in their petition.

The judgment ought to be reversed.

L. C. SLAVENS,
NELSON COBB,
Att'ys for Plaintiffs in Error.